

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CAROLYN MITCHELL,
Plaintiff,
vs.
ANCHORAGE POLICE DEPARTMENT and
the MUNICIPALITY OF ANCHORAGE, a
municipal corporation, WALTER
MONEGAN, Officer HENIKMAN and
Officer J. VOSS,
Defendants.

Case No. A05-0273 CV (JWS)

VIDEOTAPE DEPOSITION OF OFFICER ROSS HENIKMAN

APPEARANCES:

FOR THE PLAINTIFF:

MR. ISAAC D. ZOREA
MR. MOSHE CALBERG ZOREA
Attorneys at Law
P.O. Box 212043
Anchorage, Alaska 99521
(907) 337-7741

FOR THE DEFENDANTS:

MS. JOYCE WEAVER JOHNSON
Assistant Municipal Attorney
Municipality of Anchorage
632 West Sixth Avenue
Suite 730
Anchorage, Alaska 99501
(907) 343-4545

ALSO PRESENT:

MS. CAROLYN MITCHELL

* * * * *

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Exhibit A

- 1 A It's a standard trigger with a single pull.
- 2 Q All right. Let's reference are you familiar with the
- 3 events related to this civil suit?
- 4 A Yes.
- 5 Q And this incident occurred -- is it your recollection
- 6 this occurred May 8th, 2004?
- 7 A Yes.
- 8 Q So at that time you had been an officer -- commissioned
- 9 officer for approximately how long?
- 10 A I'd say year and a half.
- 11 Q Year and a half.....
- 12 A Approximately.
- 13 Q During the course of that year and a half had you
- 14 arrested very many people?
- 15 A Yes.
- 16 Q Approximately how many?
- 17 A I don't know.
- 18 Q Have you conducted -- had you conducted very many
- 19 investigatory stops?
- 20 A Yes.
- 21 Q Could you explain what occurred on May 8th, 2004 in
- 22 your words? How you came to the Sears Mall and what
- 23 happened when you arrived there?
- 24 A I heard a report of a armed bank robbery at the Wells
- 25 Fargo Bank within inside -- or inside of the Sears

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1 Malls. I responded to the mall. I set up on the
2 southwest perimeter and maintained a perimeter
3 position. I heard various radio traffic indicating
4 that there was a possible suspect described as a heavy
5 set Black female with a bag. As I was on the perimeter
6 watching the southwest exit doors of the mall I
7 observed a Black female that matched the description I
8 heard over the radio.....

9 Q Uh-hum.

10 Awalk out of the doors. I stopped her, placed her
11 in handcuffs. I conducted a pat down for weapons.
12 Identified her by her military I.D. And I stood by
13 with her while a show up was conducted. The show up
14 produced a negative result and she was released.

15 Q Breaking that down a little bit, you said you stopped
16 her. How did you stop her?

17 A I told her to turn around, face away from me, walk back
18 towards my voice and I placed her in handcuffs.

19 Q Were you holding any weapons?

20 A Yes.

21 Q What weapon?

22 A A Remington 870 shotgun.

23 Q What was the -- when she exited the building what was
24 the duration of time between when she exited the
25 building and when you placed her in handcuffs?

1 A It was within a minute.

2 Q Was she accompanied by any other people?

3 A Yes.

4 Q And who was with her?

5 A Her son.

6 Q And how old do you think he was?

7 A I don't remember offhand, I think he was 14 or
8 thereabouts.

9 Q Any other persons come out of the building with her?

10 A No.

11 Q What did you do regarding the son before you placed
12 that plaintiff in handcuffs? Did you separate them --
13 the suspect from the son?

14 A Yes.

15 Q And how did you do that?

16 A We had him stand to the side.

17 Q Was that you that told him to stand to the side?

18 A I don't remember.

19 Q Your shotgun, where was it pointed?

20 A It was held in the guard position.

21 Q And what does that mean?

22 A That'll be pointed toward the area of the suspect's
23 hands.

24 Q Okay. Do you recall where her hands were?

25 A I believe she was carrying a bag in one hand.

1 Q So when you say pointed at her hands, were you pointed
2 at the right hand or the left hand or it didn't matter?

3 A It'd be the area of her hands.

4 Q And what was behind the area of her hands is that her
5 body?

6 MS. JOHNSON: Objection, foundation,
7 speculation. Timing.

8 A Are you referring to the backdrop behind.....

9 Q Uh-hum.

10 AMs. Mitchell? That'd be.....

11 Q No, behind her hands, the back drop behind her hands,
12 were her hands away from her body or were her hands
13 next to her body?

14 A Initially when she came out she was holding a bag, I
15 believe, in one hand and they were down to her side.

16 Q So it correct to say that you were also pointing at the
17 side of her body with your weapon?

18 A Yes.

19 Q What was the distance, if you recall, between yourself
20 and Ms. Mitchell when she exited the building when you
21 -- before you placed her in handcuffs?

22 A I would estimate approximately 15 feet.

23 Q And the training that you conducted at the police
24 academy at what distance did you fire your shotgun at?

25 A Various distances.

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1 the bags in her hands or whether you -- on the ground?

2 A I don't remember.

3 Q What prompted you to place her in handcuffs?

4 A I placed her in handcuffs to detain her.

5 Q Could you have detained her without placing her in
6 handcuffs?

7 MS. JOHNSON: Objection, speculation.

8 A I could have, yes.

9 Q (By Mr. I. Zorea) During your training was there any
10 instruction on when it was an appropriate for an
11 officer to place somebody in handcuffs?

12 A Yes.

13 Q And what sort of instruction did you have concerning
14 when you could place somebody in handcuffs?

15 A It depends on the situation. In.....

16 Q (Indiscernible - simultaneous speech).....

17 Athis particular situation I'd information that a
18 armed bank robbery just occurred and someone matching
19 the description of the suspect walked out the doors.
20 It'd be appropriate for not only my safety, but the
21 safety of the public and the safety of that individual
22 to be placed in handcuffs.

23 Q So is it your testimony that you placed her in
24 handcuffs as a safety issue?

25 A That's one of the reasons.

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1 Q Whose safety were you concerned about?

2 MS. JOHNSON: Asked and answered.

3 A I mentioned my safety, the suspect's safety and the
4 safety if the individuals walking around the shopping
5 mall.

6 Q (By Mr. I. Zorea) On the inside of the shop- --
7 shopping mall or.....

8 A Anywhere.

9 Q Yet you testified earlier that you weren't in fear for
10 your safety though, were you?

11 A No, I wasn't. This is what I do for a living.

12 Q How were you protecting Ms. Mitchell's safety by
13 placing her in handcuffs?

14 A I was securing her so that -- it's been my experience
15 that a lot of individuals who may be armed may have
16 access to a weapon, while they're secured it eliminates
17 their access to a weapon, reduces any probability of
18 force.

19 Q After placing her in handcuffs I think you stated that
20 you did a pat down?

21 A Correct.

22 Q Okay. And what -- did the pat down reveal any weapons?

23 A No.

24 Q Did you look inside of the purse?

25 A Yes.

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1 Q Did you -- did you see that and.....

2 A Correct.

3 Q Okay. I mean you see your answer?

4 A This -- it's accurate.

5 Q Okay. Okay. You state that you -- you imply that you
6 did not have control over where you moved Ms. Mitchell
7 and where you placed her, is -- is that correct? Did
8 you have control over where you placed her and where
9 you moved her after placing handcuffs on her?

10 A I did have control on where I could have placed her and
11 where I could have moved her, however, I did not move
12 her from the place that she was found.

13 Q Okay. It's your testimony other than the 15 -- you
14 testified she was 15 feet away from you when you first
15 encountered her and then she backed up to where you
16 were at. You placed her in handcuffs and she didn't
17 move for 20 minutes from that specific spot?

18 A She was within the -- that general radius.

19 Q Okay. How do you define general radius, within how
20 many square feet of where you placed the handcuffs on
21 her?

22 A General radius in my opinion would be the -- the
23 general area in which I initially contacted her. You
24 know, she was with- -- obviously moved within several
25 feet.....

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1 Q Uh-hum.

2 Aif you want to get technical on -- on movements.

3 Q Uh-hum.

4 A But she wasn't taken away from the place that -- that I
5 found her to another location.

6 Q Okay. Did you place her near a squad vehicle or a
7 police vehicle?

8 A I believe there was a vehicle nearby.

9 Q Did you move her toward that or was she -- how -- what
10 was the distance of her between where she was standing
11 the majority of the time and where the squad vehicle
12 was?

13 MS. JOHNSON: If you recall.

14 A I can't give you an exact distance. It would be right
15 there within the immediate area, several feet.

16 Q (By Mr. I. Zorea) Okay. But you didn't have her stand
17 next to the vehicle?

18 A I don't recall exactly if she was near the vehicle or
19 not. She would have been near -- several feet by the
20 vehicle. Generally in show ups we try to have the
21 person remain away from any type of police vehicles.

22 Q Okay. But you did have control and the ability to move
23 her wherever you wanted to --

24 A Yes.

25 Qto move her?

1 MS. JOHNSON: Objection, asked and answered.

2 A That's correct.

3 Q (By Mr. I. Zorea) Okay. I guess for clarification
4 concerning this request for admission you state that it
5 assumes I moved there and placed her and it assumes I
6 had a choice where to place her. That assumption is,
7 in fact, a fact you did have control as to where you
8 placed her, is that correct?

9 MS. JOHNSON: Objection, foundation again.
10 Isaac, may I interject a question.....

11 MR. I. ZOREA: I think he can.....

12 MS. JOHNSON:to clarify or.....

13 MR. I. ZOREA:ask any questions she -- he
14 has to clarify. I don't see the re- --

15 MS. JOHNSON: Okay.

16 MR. I. ZOREA:you know, the need for you
17 to clarify.....

18 MS. JOHNSON: I'll save.....

19 MR. I. ZOREA:because I'm not even
20 asking.....

21 MS. JOHNSON: I'll save that for follow up
22 then.

23 MR. I. ZOREA:(indiscernible) questions.
24 That'd be good.

25 A Ms. Mitchell came out of the southwest doors of the

1 mall.

2 Q (By Mr. I. Zorea) Uh-hum.

3 A In the sense of the question I kept her within the area
4 that -- that I found her.

5 Q Uh-hum.

6 A I think this question is referring to moving her to
7 another location within the mall possibly. I -- I
8 didn't move her far from where I found her.

9 Q Okay. Well, actually just really what I want to do is
10 clarify. A request for admission is usually a response
11 admit or deny. And instead you've -- you've answered
12 it by saying I'm assuming you had a choice as to where
13 to place her. Okay. And that's -- that's an ambiguity
14 I want to clarify. You did have the choice as to where
15 to place her, is that correct?

16 MS. JOHNSON: Same objections.

17 A Well, I didn't have a choice where I found her.

18 Q No.

19 A I did not move her far from where I found her.

20 Q Yeah, but you could have, is that correct?

21 A Sure.

22 Q You could have put her in the squad vehicle, is that
23 correct?

24 A I could have, yes.

25 Q Okay. That's -- that's the ambiguity I wanted

1 Q More than three?

2 A Possibly.

3 Q Okay. You said you've done other investigatory stops.
4 During those other investigatory stops have you ever
5 placed a suspect or a person you were stopping into the
6 back of a police vehicle?

7 A Yes.

8 Q And what would you have done that for? To await a show
9 up?

10 A Yes.

11 Q Okay. 'Cause now we're getting back -- are you able to
12 articulate why on this particular occasion you chose
13 not to put Ms. Mitchell into the back of your vehicle
14 to await for the show up?

15 A Yes.

16 Q And what was the reason?

17 A Generally with show ups what we try to do is have the
18 individual -- have -- have a minimal amount of police
19 presence around the individual that we're asking the
20 witness to look at so that the witness has a more non-
21 biased opportunity to make a visual determination if
22 that's the person that committed the crime that they
23 saw. A lot of times it'd be possible that if someone's
24 in the back of a police car, if they are surrounded by
25 a lot of officers that, you know, the individual may

1 feel compelled to make a identification that may not be
2 accurate. So I was trying to make a good case and do
3 it appropriately.

4 Q Okay. Why didn't you cover up her handcuffs -- or did
5 you cover up her handcuffs or make any effort to make
6 it so that her handcuffs were not visible to the
7 witness as they drove by?

8 MS. JOHNSON: Objection, relevance,
9 speculation.

10 A Ms. Mitchell was handcuffed behind her back and the
11 witness -- the way the witness approached in the police
12 car Ms. Mitchell was facing the police car so that the
13 witness would only see basically her hands behind her
14 back.

15 Q (By Mr. I. Zorea) So I think earlier you stated you
16 didn't have any communication with the officers that
17 were with the witness, how did you know from which
18 direction....

19 A No, I said.....

20 Qthey would be coming?

21 Athat I didn't know when the officers would be
22 arriving.

23 Q Okay. Were you in communication with the officers who
24 were with the witness?

25 A When the officer that arrived with the witness I had

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1 questions.

2 CROSS EXAMINATION

3 BY MS. JOHNSON:

4 Q Officer Henikman, you testified that there were various
5 scenarios that you could imagine where having Demarcus
6 next to his mother could have been dangerous. Could
7 you expand on what kinds of scenarios an officer has in
8 his mind in that type of situation?

9 MR. I. ZOREA: Objection, calls for
10 speculation.

11 A Some of the things that I have to be concerned about
12 would be the potential for a hostage situation. You
13 know, someone that just committed an armed bank robbery
14 in their effort to get away make take hostages which
15 could include using their own children as a shield,
16 which could include taking someone -- shop -- some
17 citizen at the mall walking by, trying to approach a
18 vehicle and take control of a vehicle in an effort to
19 leave, things like that.

20 Q And you mentioned a minute ago that you try to not have
21 too great a police presence around a possible suspect
22 at the time of a show up and -- and if possible to not
23 have the witness see the handcuffs, did I understand
24 that correctly?

25 A The way I had Ms. Mitchell facing for the show up was

1 she was facing towards the police car in which the
2 witness was in. And from the witness's point of view
3 they would observe Ms. Mitchell with her hands behind
4 her back.

5 Q And let's see, when you -- Mr. Zorea was asking about
6 what -- basically why you didn't move Ms. Mitchell out
7 of sight of the media or out of sight of the public.
8 What are some of the reasons why you wouldn't say --
9 well, for an extreme example, take her over to the
10 police station to wait for a show up there. Why -- why
11 do you leave her -- you mentioned leaving her in the
12 location where you found her. Why do you do that?

13 A Well, case law has shown that when we conduct show ups
14 we always bring the witness to the suspect. We never
15 bring the suspect to the witness. We don't take a
16 person from where we find them and move them. That
17 would be considered, you know, an arrest or we would
18 reduce their, you know, freedom even further. And so
19 that's generally how we -- how we do it. And I had no
20 reason to take Mit- -- Ms. Mitchell to another location
21 from where I found her at that point.

22 MS. JOHNSON: That's all I have. Thank you.

23 MR. I. ZOREA: I have a few redirects, such a
24 broad scope of redirect, but.....

25 MS. JOHNSON: I didn't give you a lot of

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